

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-12522 of 2023
Date of Decision:- 12.04.2023**

Peter Chand

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Paramjeet Singh Jammu, Advocate for the petitioner.

Mr. N.K. Sheoran, DAG, Haryana.

KARAMJIT SINGH, J.(Oral)

The present petition has been filed by petitioner/accused under Section 482 of Cr.P.C seeking quashing of order dated 31.01.2023, Annexure P-2, whereby the application moved by the petitioner for issuing directions to Superintendent of Police, Sirsa and concerned telecom to produce the call details record (CDR), Google Map history/timeline, facebook location history details of mobile phone numbers of the person mentioned in the application along with private lap top of SI Dalip Singh, has been dismissed by the Court of Additional Sessions Judge, Sirsa.

The State counsel having advance notice of the present petition has put in appearance on behalf of the respondent.

The brief facts of the case are that two persons riding on a motorcycle were apprehended by the police on 19.11.2021. The said motorcycle was driven by the petitioner while co-accused Kuldeep Singh was sitting on its pillion seat and commercial quantity of contraband was recovered from the polythene bag which was found lying tied with said motorcycle. The petitioner and co-accused Kuldeep Singh were arrested at the spot and after completion of investigation challan was presented and charges are framed and now case is fixed for prosecution evidence.

During the pendency of trial application has been moved by the petitioner seeking directions to Supdt. Of Police, Sirsa and concerned telecommunication company to produce the CDRs, google map history/timeline, facebook location history details of mobile phones of the following persons:-

1. *SI Dalip Singh 223/H No.97283-30426.*
2. *ASI Balwant Rai 1250 No.94667-27477*
3. *EHC Rai Saheb 739 to be disclosed by him*
4. *Suraj Prakash Jain SDE No.98125-13457*
Public Health Mandi Dabwali.
5. *EASI Shailender No.227 to be disclosed by him*
Driver Govt. Vehicle No.HR-22Z-2525
6. *Peter Chand accused No.72067-07049*
7. *Kuldeep accused No.83062-16825*

The aforesaid application was contested by the State and dismissed by the trial Court vide impugned order dated 31.1.2023, Annexure P-2.

Being aggrieved the petitioner has filed the present petition.

The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case by the police and in order to establish his innocence, the petitioner intends to produce the concerned CDRs and other digital record maintained by the concerned telecommunication company. The counsel for the petitioner further submits that for that purpose, direction is immediately required to be given to telecommunication company to preserve the concerned record, so that the accused be able to summon the same at the appropriate stage during the trial. The counsel for the petitioner further submits that the Hon'ble Supreme Court in case of ***Suresh Kumar Vs Union of India 2015 (3) RCR Criminal 340*** has held that an accused can be allowed to summon CDRs of the mobile phones of concerned police officers and the accused to show that the accused/police officials were not present near the location of alleged recovery at the relevant time. The counsel for the petitioner further submits that the impugned order passed by the trial Court is contrary to the law laid down in Suresh Kumar's case (supra). So prayer is made that the present petition be allowed.

The petition is resisted by the State counsel who submits that the trial Court rightly declined the prayer made by the petitioner. It is further submitted that reliable and cogent evidence is available on record to establish the guilt of petitioner and other accused person who were found to be possessing commercial quantity of contraband while riding on a motorcycle.

I have considered the submissions made by counsel for the parties.

Admittedly the trial has commenced and case is fixed for prosecution evidence and the petitioner intends to confront the investigating officer and other recovery witnesses with the concerned CDRs and other digital record maintained by the concerned telecommunication company in order to establish his innocence and false implication. The Hon'ble Supreme Court in *Suresh Kumar's case (supra)* has observed that an accused could be permitted to summon CDRs of the mobile phones of concerned police officers to show that they were not available near the alleged place of recovery at the relevant time. The trial Court has not taken notice of the aforesaid judgment passed by the Hon'ble Supreme Court while passing the impugned order.

As per the allegations recorded in the FIR the present case is not based on any secret information and rather it is a case of chance recovery. So preservation or production of the aforesaid electronic record in question is not going to affect the source of secret

information as in the instant case no such secret information was ever received. Further, the police officials whose CDRs are called were not members of any special task force and were not holding any sensitive posts and thus, preservation/production of the concerned electronic record will not prejudice their privacy or personal safety in any manner.

As per the notification dated 21.12.2021 issued by Ministry of Communication, Govt. of India, the telecommunication company shall maintain all call details record etc. for at least two years for scrutiny. In the present case the aforesaid period of two years has not lapsed till date as the recovery in question is stated to be effected on 19.11.2021.

That being so, the present petition is allowed and the impugned order, Annexure P-2, passed by the trial Court is set aside and direction is hereby given to the Investigating Officer and Telecommunication Company concerned to preserve the CDRs of the Police Officials, private persons and petitioner Peter Chand and co-accused Kuldeep as detailed above with liberty to the petitioner to summon the same at the appropriate stage of trial, for the purpose of putting the same to confront the prosecution witnesses or to produce it in defence evidence. However the admissibility and relevance of said electronic record will be subject to the provisions of Section 65A and Section 65B of Evidence Act.

The present petition is disposed of accordingly, so also
the pending miscellaneous application(s), if any.

12.04.2023
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No